

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

YELLOW MOTOR COACH (DBA)YELLOW
TRANSPORTATION
Respondent

Case No.: I-02-12179

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 20 Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 12179) served July 23, 2002, the Government charged Respondent Yellow Motor Coach d/b/a Yellow Transportation with a violation of 20 DCMR 900.1 which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three minutes while parked, stopped or standing. The Notice of Infraction charged that Respondent violated 20 DCMR 900.1 on July 19, 2002 while parked in the 1900 block of 16th Street, N.E., and sought a fine of \$500.

Respondent filed a timely answer and plea of Deny to the Notice of Infraction pursuant to D.C. Code § 2-1802.02(a)(3), and a hearing was held on September 10, 2002. Kimberly Katzenbarger, Esq., appeared on behalf of the Government, along with Neil Williams, the charging inspector in the case. Rod Forman, assistant operations manager for Respondent,

appeared on behalf of Respondent. At the hearing, Respondent moved to amend its plea to Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2). After informing Respondent of the effect of such an amendment and without any objection from the Government, I granted that motion.

Based on the testimony of the witnesses and my evaluation of their credibility, the admitted documentary evidence and the entire record in this matter, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. By its answer and plea of Admit with Explanation, Respondent Yellow Coach d/b/a Yellow Transportation has admitted violating 20 DCMR 900.1 on July 19, 2002 in the 1900 block of 16th Street, N.E.

2. On July 19, 2002, Respondent idled the engine of its bus for more than three minutes while parked in the 1900 block of 16th Street, N.E.

3. Respondent had apprised its drivers of the requirements of § 900.1 prior to the Notice of Infraction being issued, and Respondent noted that in certain areas of the city its drivers had personally observed signs outlining those requirements. Respondent speculated that, in light of various maintenance requirements on the bus, the driver of the bus in question may not have been aware of how much time had passed while the bus's engine remained idling.

4. Respondent has accepted responsibility for its unlawful conduct.

5. In light of Respondent's explanation, the Government has recommended that the fine be reduced to \$350.

III. Conclusions of Law

Respondent violated 20 DCMR 900.1 on June 3, 2002. A fine of \$500 is authorized for a first violation of this regulation. 16 DCMR §§ 3201.1(b)(1) and 3224.3(aaa). In light of Respondent's acceptance of responsibility and the Government's recommendation, I will reduce the fine to \$325.¹ See D.C. Official Code §§ 2-1802.02(a)(2); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine in the total amount of **THREE HUNDRED TWENTY-FIVE DOLLARS (\$325)** in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order (15 calendar days plus five 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

¹ At the hearing, counsel for the Government requested that, as consideration for its recommended reduction, this administrative court require Respondent to ensure that notice of the requirements of § 900.1 that Respondent disseminates to its drivers is kept current. Apparently, according to counsel, Respondent had prepared a prior notice for its drivers that did not reflect the current version of § 900.1. As I noted during the hearing, under the Civil Infractions Act, this administrative court is without the powers in equity to issue an injunction against Respondent in this regard. See D.C. Official Code § 2-1801.03. It behooves Respondent, however, to follow the Government's recommendation so that violations of the current requirements of § 900.1 – and the sanctions attached thereto – can be avoided.

ORDERED, that, if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED 09/26/02

Mark D. Poindexter
Administrative Judge